

DEBATE

UPON THE

MOTION FOR ABOLISHING THE PUNISHMENT

OF

DEATH,

IN

THE HOUSE OF COMMONS,

TUESDAY, MARCH 9th, 1847.

London:

C. GILPIN, 5, BISHOPSGATE STREET WITHOUT.

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1847.

PUNISHMENT OF DEATH.

HOUSE OF COMMONS,

Thursday, March 9th, 1847.

MR. EWART presented petitions for the repeal of the punishment of death—from a numerous meeting, one of the largest ever held, at Exeter Hall; from Liverpool, signed by 13,000 persons; another from Liverpool, signed by the stipendiary magistrate, and several of the other magistrates of the town and county: also from Birkenhead, Exeter, Norwich, Chichester, Dorchester, Bridgewater, and many other places, as well as from public meetings, and from congregations, in the metropolis and elsewhere.

MR. THORNELLY also presented a petition from the magistrates and a large number of the respectable inhabitants of Liverpool, to the same effect.

MR. EWART then rose to bring forward the motion of which he had given notice for the total repeal of the punishment of death. Seven years had now elapsed since it had been his lot to bring this subject before the attention of the House. At that time the subject excited a strong interest; but

it now assumed a far deeper and more earnest character. This appeared partly from the number of the petitions just presented, and the numerous meetings held throughout the country, partly from the changed character of the petitioners. Seven years ago, few of the clergy of the Church of England had given in their adherence to the principle of total abolition. Now, a considerable number had done so. Many were willing to append their names to petitions, and to support at public meetings the christian principle of repeal. [Hear, hear.]

The further spread of these opinions was to be inferred from the increasing difficulty which he understood to prevail of obtaining from juries, verdicts which involved the punishment of death. One particular instance had been cited to him, in which the verdict was directly against the facts. If so, their instruments of justice failed them. It might ultimately fall, enfeebled and useless, from their hands. [Hear, hear.]

Proceeding into the subject he should avoid two views of it: the religious view,—although he entertained as strong a conviction of the essentially un-christian spirit of capital punishment as any man,—and the theoretical view of the question. He would endeavour to argue it on practical grounds: first, attempting to prove that death-punishment was no longer necessary; secondly,

that it was positively injurious. The most eminent writers, philosophical as well as practical, fixed capital punishment on the basis of necessity. Filangieri argued, that it was originally based on the necessity of self-defence. But if society could defend itself without capital punishment, this plea of necessity vanished. A more modern, and a royal writer, distinguished by the mingled benevolence and reason which add the highest lustre to a crown—the King of Sweden—[hear, hear] had also laid it down that capital punishment could be justified by necessity alone. That most enlightened monarch had appointed a commission to enquire into the criminal laws of Sweden. In his own work he stated, that “The commission considers that capital punishment cannot be defended, before the tribunal of reason and justice, on any other grounds than its being found necessary for, and conducive to, the existence and objects of the state. But,” he significantly adds—“this necessity and applicability are doubtful.” Is then the infliction of this punishment necessary—he (Mr. Ewart) would use a stronger term, indispensable—in our own existing state of society? Has it not safely been dispensed with in less advanced and more dangerous states of society? Had the familiar reference to the mild justice and sound policy of the code of Leopold of Tuscany, abolishing capital punishment, ever been disproved? Or the success-

ful experiment of Sir James Mackintosh, in Bombay, as stated by himself? Or the less known, but equally favourable result of the late Lord Metcalfe's merciful criminal code in Delhi, reported in the annals of the East India Company? He (Mr. Ewart) understood also on good authority, which extended to the year 1845, that the reign of the present Emperor of Austria was distinguished by the absence of capital punishment; yet that the crime of murder in Austria had diminished. But the advocates of the maintenance of capital punishment took their stand on the last step of the scaffold; and, granting much in favour of mitigation, insisted on the peculiar necessity of this punishment in the single case of murder. But, had they not urged also this same plea of peculiar necessity through each succeeding step of those various acts of mitigation which they first opposed, and now, it seems, approve of? When it was attempted to abolish capital punishment for the stealing of sheep, of cattle, and of horses, and even of 5*l.* in a dwelling house, there were those, in the House of Commons, who asserted its peculiar necessity in such especial cases. When it was hinted that even forgery need not be capitally punished, how many insisted on the peculiar necessity of protecting the moneyed interest by sanguinary laws? In almost every successive stage of mitigation, the plea of the necessity for maintaining the punishment of

death in that especial case was urged against the mitigation. And yet, such peculiar necessity was no longer felt since the mitigation was achieved. Might not the plea then be equally futile, that the infliction of capital punishment was peculiarly necessary in the single case of murder? Its remission extended to cases on the confines of that crime;—so nearly indeed that the line of demarcation was scarcely to be distinguished. Is it not therefore possible, or probable, that it might as safely extend even to that crime? On what reasonable grounds had their opponents shewn that it should not? The only plausible distinction which they drew was, that in the case of murder, there was a sort of *proportion* between the crime, and the punishment of death. For his part, he could not see why the principle of proportion was not similarly, if not equally, applicable to other cases in which the punishment of death had been abandoned. He could not understand that it was anything else than the primitive law of barbarous retaliation—the short, simple, and easy doctrine of the *lex talionis*, so long, but now no longer, the royal road to punishment. Lord Bacon had justly described revenge as a “kind of wild justice.” But this species of retaliatory justice was only a sort of deliberate and civilized revenge. He denied, therefore, that on the ground of “proportion,” the retention of capital punishment was proved to

be any longer necessary. But its necessity might possibly be proved from statistics. Reason not being strongly in its favor, refuge might be found in figures. Let us therefore meet the question on the debateable ground of statistics. Now it was generally admitted that statistics might be found or fabricated on either side of an argument: they were, or they might be, two-sided instruments of parliamentary warfare: like the oracle of old they might utter, not the inspiration of the Deity, but the promptings of the priest. It was also admitted that statistical results often depended on the particular years included, within a particular return. A year or two of distress, such as the years 1842 and 1843, might overthrow the entire basis of a calculation. Other causes, not permanent but temporary, might sway the balance, and disturb the fair principle of calculation. But he thought the fairest principle to proceed on was, to take a certain number of years, during which the capital punishment was inflicted, and a similar number of years during which it was dispensed with, and compare the results. He would first refer to a large class of crimes in general for which capital punishment had ceased; and next to the crime of murder, for which alone, practically speaking, it was still retained. The first return then which he would cite, related to the first general class of crimes. Its date was May 22,

1846. It referred to 17 species of crime, punishable with death in 1830—the period whence the modern mitigation of our code might be deemed to date: it extended backwards to five years of capital punishment, forwards to five years of non-capital punishment, for those 17 kinds of crime. The result was, that, during the five years of capital punishment, the total amount of crime in those 17 cases was 7276; during the five years of non-capital punishment, it fell to 7120: this, too, notwithstanding the increase of the population. He thought this a fair comparison. In subsequent years, possibly other causes might incline the balance one way or the other. In one year it was better, in another worse. In the years 1842 and 1843, from distress, vast was the increase of crime. Last year, again, it had decreased; if he remembered right, 8 per cent in general, and in one particular case, (in which it had before increased, and whence arguments against further mitigation had been drawn,)—it had decreased 26 per cent. So much for crimes generally. [Hear, hear, hear.]

Now for the crime of murder. A return, moved for in 1841, giving executions and their results in successive periods of five years, shows that for the five years ending 1825, 1830, 1835, and 1840, as the number of executions for murder diminish, the number of murders decrease. The number

of executions fall from 76, in the first five years ending 1825, to 40 in the last five years ending 1840; while the number of committals for murder fall from 383 in the first five years, to 291 in the last five years. In the same periods it would appear, that the certainty of punishment increased; for the centesimal proportion of convictions to committals rose from 22.98 to 29.90. Another return elucidating this subject—moved for, like almost all these returns, at the suggestion of a highly valued friend of his, (Mr. Wrightson,) a gentleman who had written ably on the subject,—was dated Aug. 22, 1843. It comprehended periods of six years, from the years 1813 to 1842, inclusive. As the capital punishments for murder decreased in the descending scale, the crime of murder appeared to decrease also. In the first period of six years, when the number of capital punishments was 122, the committals for murder were 444. In the last of the periods of six years, when the capital punishments were only 50, the committals had fallen to 351. [Hear, hear.] Another table in the same return showed another important result. It reviewed first, those years in which *all* who were convicted of murder were executed, and an equal number of years in which the *smallest number* of those who were convicted were executed; thus comparing the effect of the most unsparing execution with that of the greatest amount of forbearance. What was the

result? In each year following those years in which executions invariably took place, the number of murders increased. Combining them together, the increase of committals was from 239 to 270. On the other hand, in the years following those years in which there had been the fewest executions, the committals had fallen from 268 to 222. He might adduce further statistics illustrative of this argument, especially those drawn from the results of commutations in different counties. But he forbore to overload the subject and fatigue the House. He might further refer to the results of mitigation in France, Prussia, and Belgium. But he would limit himself to those experienced in the last named country; because Belgium was the only country in which capital punishment had been recently abolished. It was abolished there, or suspended, in the year 1830. But, in the year 1835, it appeared that certain individuals advised its re-introduction for the sake of "making an example." Capital punishments were therefore revived: what was the result of that revival?—Condemnations for murder, which in the preceding five years had been 20, rose in the next five years to 31, or above 50 per cent. Here he would conclude his argument from figures. Arguments from facts and circumstances led to the same conclusion. [Hear, hear, hear.]

Our prison discipline was immensely improved;

our police everywhere better regulated ; education was yearly advancing. The additional safeguard which these improvements gave, while they rendered crime more unlikely or more controllable, rendered less necessary the assumption of the disposal of human life by man. Finally, on this part of his argument he would say, that, however he might have argued—ill or well—against the necessity of capital punishment, the real *onus probandi* did not lie on him, to prove, or try to prove, the negative,—that capital punishment was not necessary,—but upon those who opposed him to prove the affirmative issue of its necessity. Here he left this part of his argument, and proceeded with the next, to show that the punishment of death was not only not necessary, but that it was positively injurious in its results.—Injurious to whom ? To the criminal who suffered ; to the jury who tried him ; and to the public, for whose sake the suffering was supposed to be permitted. First with respect to the criminal. It had been admitted ever since the days of Beccaria, that the main element of a well chosen punishment was its certainty of infliction. But, he would ask, can you unvaryingly, or with any due degree of certainty, inflict the punishment of death even for the crime of murder ? If you cannot do so, the general effect on the criminal's mind must be an uncertain one. In such a case the disposition

of man inclines towards the chances in his own favor: a species of moral gambling is engendered, and he boldly stakes the uncertainty of his own life against the general uncertainty of the law. But, besides the final uncertainty of the punishment, there were many intermediate causes of uncertainty. There was an uncertainty which had not been sufficiently dwelt on—that of the English legal definition of murder. “Malice prepense” must be an essential ingredient in the crime. Now it appeared to him, that “malice prepense” might bear a different definition in the minds of different judges; for the proof of it depended on the circumstances of the case; and that which might appear to amount to a deliberate purpose in one man’s mind, might not appear so in the mind of another. He thought the uncertainty of this definition was traceable in the constructions which it had undergone by different tribunals. He forbore to dwell on the various stages, before, during, and after, the trial, all so many different degrees, or progressions, of uncertainty. Before the final consummation of the sentence, both local interest and public feeling interposed, to stay the uplifted arm of justice. What was worse, a morbid sympathy was engendered—engendered he (Mr. Ewart) maintained, by capital punishment alone—which threw a false splendour around the criminal and raised him into a sort of felonious hero. [Hear,

hear.] This false splendour was flung over one, who would otherwise be unnoticed, by the magnitude of his punishment and what might be called the dignity of death. That it was the punishment, not the crime, which produced this false sympathy, he (Mr. Ewart) was convinced, for this reason :—formerly, the same sympathy existed for criminals who were capitally sentenced for forgery, for robbery, or for sheep-stealing. But, now that the capital punishment was abolished in those cases, the false sentiment in their favor existed no longer. Surely the same result must follow, if the capital penalty be repealed in the case of murder. The last bad effect on the criminal, too obvious and too often urged for him to dwell upon, was that serious, but unanswerable objection in the eyes of reason and religion,—the withdrawal, or rather extinction, of the criminal, without the chance of reform. By capital punishment he was dismissed,

“Unhousel’d, disappointed, unanel’d,”

No reckoning made, but sent to his account

With all his imperfections on his head !

And justice, or rather law, precipitately closed the career of crime ! He (Mr. Ewart) turned next from the prisoner to the adjudicating body—the jury. He maintained that the continuance of capital punishment was positively injurious also in its influence on the jury. It dazzled, or it dimmed,

the vision of justice, which should be strong and clear. The magnitude of the punishment threw the crime into the shade. The jury were taught to shrink from a responsibility, where they ought simply to discharge a duty; their decisions were overshadowed by the magnitude of the penalty imposed by the law. [Hear, hear.] This feeling had evidently increased in modern times. In his opinion, it would continue to increase. As men advanced in civilisation, they must more acutely feel their own responsibilities;—above all, they must feel that awful responsibility, the infliction of a punishment final and fatal by a fallible tribunal. [Hear, hear.] In modern times too, men were prone to draw the most subtle and minute distinctions on the ground of insanity in cases of murder. Perhaps it might be even said, that the more horrible and strange the murder, the more inclined might some men be to ascribe it to the wanderings of reason. Here then was another opening for the escape of the responsibility of a jury. The continuance therefore of capital punishment enfeebled the administration of justice, and shook our jury system to its foundation: it was injurious alike to the tribunal which administered, and the criminal who suffered from, the law. But was it not also fatally injurious to the public?—the public whom they ought first of all to regard—the public for whose sake it was said

that capital punishments were maintained as an example. As an example to whom? What thoughtful father would admonish his children by means of such an exhibition? What pious tutor would initiate his pupils in such a lesson? Was it then for the more laborious classes that they maintained this public ceremony; those classes whom they ought to elevate and refine, not demoralize and debase. To which portion of those who beheld it, could it do good? To the virtuous? They shunned it entirely, or retired from it with abhorrence; or, if they endured to witness it, they became one step the further removed from virtue. To the vicious? It had been proved by repeated evidence, that criminals were not only the unreformed witnesses of executions, but that they were, in some cases, incited to crime by witnessing them. [Hear, hear.] Was it then the uncertain mass who fluctuate between good and evil, the indifferent, on whom executions were to produce an effect? If for such as these, executions were to be maintained as an incentive to virtue, why not make a great moral lesson of them? Why not invest executions with the serious dignity of a solemn ceremony? Instead of that, they were hurried through, often suddenly, in the doubtful twilight of the morning—as if the state were ashamed of this great moral lesson, and still more, as if it were ashamed of the minister of public

instruction, by whom this moral lesson was practically imparted. But, it might be said, "Execute in private;" and some persons were in favor of such a proposition. If so, what became of the argument of example? It must, in that case, be abandoned as untenable. But there was another point of view which more especially disclosed the inefficiency of capital punishments, in free countries like our own. In such countries, efficient punishment might be said to consist of two combined forces; the one derived from the sentence of the law; the other from the weight which public opinion superadded to that sentence. In such cases, the effect of law was enforced by the coincident pressure of public approbation. But if the law were at variance with public opinion, public opinion exercised, not a coincident, but a perpetually counteracting effect to the pressure of the law. But what if that counteracting effect went on constantly increasing? From the Petitions on their table, from the well known sentiments of the people, it appeared that it did so. In the case of capital punishments, therefore, you had not only an established resistance to the pressure of the law, but a resistance which was constantly increasing. Every year, therefore, must add to the difficulty, if the present system be continued. But, if it were discontinued, he might be justly asked, what punishment would he sub-

stitute for the punishment of death? To that question he would answer, that with all the appliances and means, and all the skilful refinements of our present system of imprisonment, he would substitute imprisonment for life. This had been done in other countries possessing less advantages than our own. Why should it not be tried in ours? Such a punishment was not, like the punishment of death, barbarous yet evanescent; it was ever present and ever effective. It was no transient and futile horror, like the spectacle of a sudden and sanguinary death, but, while life lasted, an ever-living lesson. Nor would it be wanting in severity; since what more formidable sentinels could overshadow the portals of a prison than the gloomy phantoms of solitude and sin? In the course of time, the prisoner might be brought under the influence of religious hopes and fears; reformation might take the place of execution;

*Donec longadies, exacto temporis orbe,
Concretam exemit labem, purumque reliquit
Ætherium sensum: [Hear, hear, hear.]*

But what was the operation of the present system? Time was, in many cases, denied for the operation of repentance. If the distinguishing doctrine of Islamism was resignation, surely one at least of the vital characteristics of christianity was repentance. Yet by the infliction of capital pun-

ishment we close the gates of repentance on mankind. Nay, some of the strongest opponents of abolition admitted this objection. For they proposed that the execution of a capital sentence should be suspended for a year; in order to give time for repentance. But if for one year, why not for two? for three, for four, five or ten? Who shall prescribe within what time a sinner shall repent? The principle of opposition on this ground was then virtually abandoned: and what more momentous ground could be submitted to their contemplation? This only passing glance at one religious aspect of the question, which forced itself on his attention, would he (Mr. Ewart) allow himself. But, ere he closed, he must turn to another view of the question. It was not by sanguinary punishment, or punishments of any description, that they could overcome the tendency to crime. The remedy was a more searching one. To extirpate the evil they must strike deeper; they must give the people not a horror of the punishment, but a horror of the crime. [Hear, hear.] They must educate the people. But there were two modes of educating them; one acting by internal means, the other by external influence of outward objects. Among the external influences, one was the withholding from the view of the public sights which could only tend to harden and degrade it. All experience shewed that such sights debased and

barbarized the people familiarised with them. The King of Sweden, to whose work he had already referred, conclusively proved this result. He gave a catalogue of those countries in which capital punishments were most common, and shewed that in them savage and sanguinary crimes were most prevalent. Thus Spain, which exhibited the most numerous executions, (one yearly in 122,000 inhabitants,) was the most fertile in atrocity of crime. But Norway, in which country no execution occurred in 1835, 1836, and 1837, shewed for previous years only one execution for every 720,000 of its inhabitants. Yet the conterminous country of Sweden, in which crimes were far more common, exhibited one execution for every 172,000 inhabitants. The same inferences might be drawn by comparing Ireland, and even England and France, with Pennsylvania, Prussia or Bavaria, states in which executions were most rare. History told the same tale. In the best times, capital punishments were the most uncommon, or the most at variance with the feelings of the people. Thus, in the high and palmy days of Rome, they found capital punishments generally abolished. Even on occasion of the treason of Catiline, an argument was raised against the infliction of the punishment of death. It was argued (says Cicero), "*mortem a diis immortalibus non esse supplicii causâ constitutam . . . Itaque eam sapientes nunquam inviti, fortes etiam sæpe*

libenter oppetiverunt.” In the earlier and purer era of primitive Christianity, the same reluctance had been manifested. High reason and deep religion, combined and coincided on this good principle. The time was come, when in this country the experiment might be fairly tried. Commercial freedom was opening trade and labour to the people. Education was following in the track of commercial freedom. The people even now were scarcely patient of these pomps of death and spectacles of blood, the attributes of an age more barbarous than our own. He asked the legislature to listen to their aspirations; to achieve a great social, moral, and religious victory; and to offer up this last sacrifice, expiatory of the sanguinary legislation of the past, on the united altars of civilisation and christianity. The Hon. Gentleman then moved [amidst cheers] for leave to bring in a bill for the entire abolition of the punishment of death.

DR. BOWRING seconded the motion. Every discussion that took place in that house and out of doors on this question brought the period nearer to them, at which the total abolition of the punishment of death would become inevitable. It could not be denied that every experiment that had been made had been successful, and that with the diminution of punishments there had been a corresponding diminution in crime. If anything cha-

racterized an advancing and progressive age, it was respect for life. [Hear, hear.] Disregard of that highest and greatest of treasures was always associated with backwardness and barbarism. If they wished to create a horror of murder, the legislature itself should not commit murder, as it did under the present system. They professed to be anxious to surround life with guarantees, and yet they perpetrated murder with all the formalities of law. Reverence for life, and a disposition to recognize its sacredness, and an unwillingness to throw it away, was what distinguished the best understanding of the principles of christianity, and the first advance of civilization and philosophy. In a state of society in which life is wantonly wasted, they would find all the elements of crime ; but the indisposition to crime, as far as their experience went, was always associated with that hesitation with which legislators consent to destroy life, and in which public opinion comes to confirm the decision of legislators. [Hear, hear.] The example of Prussia showed the benefit of discontinuing sanguinary punishments ; in the period of five years ending with 1824, there had been 69 convictions of murder, with 54 executions. In the next five years, 50 convictions with 33 executions ; and in the five years next following, when the executions were reduced to 19, the convictions of murder fell to 43, having been 69 in the first

period. Again, let them look to the number of homicides and other aggravated crimes in the Roman states as compared with Tuscany. These were adjoining states; the people much resembled each other; and he imputed the small comparative number of homicides and other crimes in Tuscany to the humanity of the legislation, which was in his mind the philosophy of legislation. He did not think that the house could be better employed than in diminishing the number of crimes for which the perpetrators were now executed, and as experience had hitherto been successful in all proceedings in that direction, he trusted that the house would assent to the motion of his honourable friend.

SIR GEORGE GREY regretted that he could not assent to the motion of his honourable friend, the member for Dumfries. On the present occasion his honourable friend had avoided an objection which was made to another motion he brought forward in 1840 on this subject, the last time, he believed, that it had been before the House. That motion stated distinctly that capital punishment should cease, and the effect of the adoption of such a resolution would have been the involving those charged with the execution of the law in great embarrassment. His honourable friend now moved for the abolition of the punishment of death in another manner, that is, by a

bill; but, looking at the arguments adduced in support of the motion, and also at the effect which he believed that the adoption of a motion for a bill to abolish the punishment of death would have, he felt it to be his duty to resist the introduction of the bill. The honourable gentleman very properly discarded the urging any theological ground for his motion, but rested it on the state of society, and on the diminution of crime which it would lead to. The honourable gentleman did not call upon them to diminish the number of offences for which the punishment of death now appeared in the statute-book because there were peculiar grounds for such diminution, but invited them to agree that in all cases, and even cases of the most aggravated murder, and cases of high treason, which might involve the greatest interests of the nation, and be attended with the most serious loss of life, they should dispense with the punishment of death. He could not agree to such a large and sweeping proposition. His honourable friend said that he founded his case on statistical returns, and his honourable friend who seconded the motion also quoted further statistical returns, and said these showed that in proportion as they had repealed the punishment of death for crimes, so in the same or a greater proportion had crime diminished. He agreed with his honourable friend that statistics were the elements of parlia-

mentary warfare; but if they took other quinquennial periods, instead of those quoted by his honourable friend, it would be found that they would give directly opposite results. If they took only one period, particular circumstances might have existed to lead to a diminution of crime; but if they took an equal period at another time, an increase would appear. In stating this, however, he admitted that the effects to the contrary were not of a very serious nature, and he believed that no one in that house would say that he wished the legislature to retrace its steps, and go back to the punishment of death in cases where it had been abolished. [Hear, hear.] The principle was an important one as related to the interests of society, and as regarded the prevention of crime. His honourable friend said that the infliction of the punishment of death in cases of murder did not answer the object in view; but he founded this opinion not alone on statistics as to the crime of murder, but on statistics having reference to other crimes for which the punishment of death had been removed. With regard to the results obtained respecting the latter class of crimes, it must be admitted that public opinion did not go with the infliction of the severer punishment. [Hear, hear.] They were a class of crimes the commission of which did not so deeply involve the interests of society. It was therefore impossible for the government to inflict the capital punishment against the operation of public opinion. Therefore, as long as the severer punishment existed, it held out an inducement to the commission of the crime, as criminals believed that they might to a certain degree commit them with impunity, from the unwillingness of parties to prosecute and of juries to convict. [Hear, hear.] Persons, in

many of these cases, would not come forward to prosecute, as these crimes involved only a pecuniary loss, and they therefore would not prosecute when the result probably might lead to the shedding of blood. Juries also were unwilling to convict in such cases, even on the strongest evidence. The hope of impunity was thus excited, and a premium was thus held out for the commission of this class of crimes. It was certainly true that no threat of capital punishment would deter from the commission of crime when it was known that the punishment would not be inflicted. In fact, no act of parliament could answer the object in view, if it imposed punishments and penalties which ran counter to the current of public opinion, and such a law must soon be repealed by the successful influence of public opinion. [Hear, hear.] What is the state of the law with respect to capital punishments? Since 1841, when the last amendment of the law in this respect was made, certain cases were reserved in which capital punishment should be inflicted, but not a single execution had taken place since that time but in cases of murder. He was not prepared to say that the country was prepared for the abolition of the punishment in the latter case, but he was, also, not prepared to carry the principle further in the other cases which had been reserved. The question of his honourable friend involved all cases besides murder, but he was not prepared on the commission of other great atrocities to rescind the punishment of death. There recently had been no executions but in cases of murder; but had there been an increase of the crime of murder in consequence of the punishment of death being attached to it? From returns which he had before him, it appeared that there had been a great diminution in

the number of murders committed since 1819, while other crimes had increased. He did not say that the abolition of the capital punishment was the cause of the increase of other crimes, for they must take into consideration the increase in the population since that time, and above all, the improvement which had taken place in the police, which had increased its efficacy to such an extent.* The almost certainty of execution following in clear cases of murder had not tended to increase that crime, but had had the practical effect of diminishing it. He believed that criminals looked forward with a degree of horror at the infliction of the punishment of death, which they would not feel at any other punishment. The certainty of it following in cases of murder, rendered it different from its being attached to other crimes where it was not inflicted. He did not believe that public opinion was in favour of the abolition of this punishment, although a large number of conscientious persons, for whom he entertained the greatest respect, were in favour of it; but still he believed that the great majority of the people would be shocked, and public feeling would be outraged if it was at once abolished. His honourable friend had stated that life was the highest and greatest treasure of man, and that it should not be sacrificed wantonly. He (Sir G. Grey) not only agreed in this, but he would observe, that it would be disgraceful in any government wantonly to inflict any punishment. It was the first duty of government to look to the protection of life, [hear, hear,] and he believed that it was by

[* The speech, as reported, is here obscure. An "*increase of other crimes*," (or of crime in general, which was probably meant,) could hardly have been intended as evidence of "*increased efficacy*" in the police.]

the continuance of the punishment of death in cases of murder, that this object would be attained. In cases of murder also, was there any unwillingness to come forward? On the contrary, in such cases there was every desire, on the part of both prosecutor and witnesses, to do so, and it was in the very rarest instances in England that juries hesitated to discharge their duty in such cases. Therefore, he said that no man who committed murder could reasonably expect that the punishment of death would not follow. His honourable friend had spoken of executions, and had asked what was the use of them. Did he suppose that they were to operate as an example on those only who saw them with their own eyes? He (Sir G. Grey) believed that the effect was not produced on spectators alone, but the fact operated when the result became known. When persons read accounts of the execution and the trial, and were struck with the solemn mode in which sentence was passed, the effect was produced on the rest of the community, and was not merely confined to the crowd which had assembled to witness the dying struggles of the criminal. He would not say whether executions produced crimes to the extent stated by his honourable friend; but he (Sir G. Grey) believed that persons who went to executions were generally deeply imbrued in crime. [Hear, hear.] With reference to juries having been said to acquit improperly persons charged with murder, on the ground of insanity, he could say, from his experience in the office which he had the honour to fill, that the cases were not nearly so general as stated, and although there were cases of this serious nature where juries had given such verdicts on comparatively slight indications of insanity, yet there were many more where juries had given such verdicts

in cases of simple larceny, from some mistaken feelings of humanity. In the latter cases the parties would certainly have a much longer imprisonment inflicted on them. As to that part of his hon. friend's speech in which he stated that if the capital punishment was abolished in cases of murder, the juries would be unwilling so readily to give credit to the plea of insanity, he did not think that his honourable friend had adduced any argument which would justify the support of the motion on that ground. He did not think it was necessary for him then to go further into the subject. As to the abolition of the punishment of death for the other crimes on which it was now imposed, he would only observe that, although for the last five years no case had occurred in which it was necessary to inflict it, yet cases might arise, such as treason, in which it would be necessary, although this was a crime of such unfrequent occurrence; but that the crime was not common was no answer to the necessity for enacting the severest punishment for it.

MR. HUME observed that the right honourable baronet had admitted the diminution of some crimes by the abolition of the punishment of death. Was not that the strongest argument for going on in the same course? The speech of the right honourable baronet involved an argument against the abolition of the punishment of death in any case. This was the old argument against the abolition of the punishment in all cases of stealing, on the principle that property was sacred, and should be "protected" in every possible way. The right honourable baronet professed that he was not prepared to go back, but all his arguments told against him on this point. It was notorious that persons who went to executions be-

came indifferent to the shedding of blood, and very often ultimately became murderers themselves. The result of every proceeding on the subject in that house for the last 25 years, showed the propriety of diminishing the severity of punishments. The right honourable baronet said that public opinion was not favourable to the removal of capital punishment in cases of murder. But there were four or five other crimes for which this punishment was now retained, but never executed. Surely it could be abolished with respect to them. [Hear, hear.] Juries formerly hesitated to convict in the clearest cases where property was concerned, because they objected to the infliction of capital punishment; and so it would be in cases of murder. The question was, whether the taking the life of a murderer deterred another from the commission of that crime? Such had been the effect of abolishing this punishment, that he called upon the House to go on in the same course. The arguments of his honourable friend were not met by anything which had been brought forward that night. He trusted that at any rate the government would allow the bill to be brought in.

MR. AGLIONBY was anxious, as a supporter of the motion, to say a few words on one point which had been alluded to. The right honourable baronet had said that the feeling of the country was against the motion. Now as far as his observation extended, the right honourable baronet was mistaken, for he believed that it was almost entirely in favour of the motion. He knew this to be the case with respect to his constituents, who, if they did not entertain an unanimous feeling on the subject, yet a very large majority of them were decidedly of opinion that this punishment should cease.

SIR H. R. INGLIS said, this measure being for the entire abolition of the punishment of death, no member could vote for the introduction of the bill, who was not prepared to accede to the adoption of such a principle. And he, for one, conceived that Scripture had not left it open to be argued on grounds of mere expediency, whether that punishment should be inflicted in cases of murder ; so that he could not (as the right honourable the Secretary of State had intimated his readiness to do,) discard the theological view of the question. It was an error to imagine that the scriptural authority for capital punishment in the case of murder, rested only on the levitical law. It was (he thought,) part of the divine command on the first replenishment of the earth, "Whoso sheddeth man's blood, by man shall his blood be shed." But upon even the lowest ground of mere expediency, the abolition of the punishment was to be deprecated ; for if the murderer were not liable to a higher degree of punishment than the burglar, the burglar when tempted so to do, would have no inducement not to commit murder in order to destroy the witness of his crime. Believing that the measure would weaken the security of life, and loosen the ties of society, he should oppose its introduction.

MR. BROTHERTON said that punishment could only be justified either on the ground that by its infliction reparation would be made to society, or that it would reform the criminal, or that it would deter others from the commission of crime by the example it afforded. It could be easily shown that capital punishments could never produce any such effects. A man hanged could no longer be a useful member of society. He alone who gave life had the right to take it away, and on the ground of humanity, and the want of divine authority,

he contended that the punishment of death should not be inflicted. Its infliction was a violation of the most sound principle that could affect the human mind. As to the quotation, "Whoso sheddeth man's blood, by man shall his blood be shed," it no more justified the taking away of human life by the law than that other scripture, "All they that take the sword, shall perish with the sword." Both were only intended to teach men that they must expect to suffer punishment for the commission of violence. It was a part of the moral law, and not a command to shed the blood of fellow men. If it were to be taken as a command to shed blood, one murder would lead directly to another. He maintained that it was wrong in principle to retain the law of death upon the statute book. They might inflict any other punishment they thought necessary, from the treadmill to the silent and solitary system, or transportation, but they had no right to take human life away. Let them observe how much the tone of public opinion upon the subject had improved since the year 1814, when some of the most trivial offences were punishable with death; and when a judge, who in condemning a man on the then capital charge of cutting down a cherry tree, justified the *enforcement* of the sanguinary sentence by saying that the man who would cut down a cherry tree, would kill a man! He trusted that public opinion would improve still further, until those modes of punishment which were derogatory to human nature should be finally abolished, their only tendency being to uncivilize society.

The House then divided—

For the motion.....	41*
Against it.....	81
Majority against MR. EWART'S motion	—40

* LIST of the MINORITY who attended and voted in
support of MR. EWART'S motion.

Aglionby, Henry A.	Cockermouth.
Baine, Walter	Greenock.
Barclay, David	Sunderland.
Barnard, Edwd. Geo.	Greenwich.
Bowring, Dr.	Bolton.
Brotherton, Jos.	Salford.
Brown, Wm.	S. Lancashire.
Castlereagh, Viscount	Downshire.
Christie, Wm. Dougal	Weymouth.
Crawford, W. Sharman ...	Rochdale.
Currie, Raikes	Northampton.
Dennistoun, Jno.	Glasgow.
D'Eyncourt, Rt. Hon. C.T.	Lambeth.
Duncan, Geo.	Dundee.
Ellis, Wynn	Leicester.
Escott, Bickham	Winchester.
Fielden, Jno.	Oldham.
Hanmer, Sir Jno.	Hull.
Hindley, Charles	Ashton-under-Lyne.
Hutt, Wm.	Galeshead.
Kelly, Sir Fitz Roy	Cambridge.
Lawless, Hon. C.	Clonmel.
Mackinnon, W. A.	Lymington.
McCarthy, A.	Cork.
Milnes, Rich. M.	Pontefract.
Morison, Gen.	Clackmannan, &c.

Muntz, Geo. Fred.....	<i>Birmingham.</i>
O'Brien, Cornelius	<i>Clare Co.</i>
O'Connell, Jno.....	<i>Kilkenny.</i>
Pattison, James	<i>London.</i>
Pechell, Captain	<i>Brighton.</i>
Strickland, Sir Geo.....	<i>Preston.</i>
Tancred, Henry W.....	<i>Banbury.</i>
Thornely, Thos.....	<i>Wolverhampton.</i>
Trelawny, Jno. S.....	<i>Tavistock.</i>
Turner, Edmund	<i>Truro.</i>
Walker, Rich. ..	<i>Bury, Lancashire.</i>
Warburton, Henry	<i>Kendal.</i>
Williams, Wm.	<i>Coventry.</i>
Yorke, H. G. Redhead....	<i>York.</i>

TELLERS.

Ewart, Wm.	<i>Dumfries, &c.</i>
Hume, Joseph.....	<i>Montrose, &c.</i>

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In a Letter to the REV. SIR JOHN PAGE WOOD, Bart., B.C.L.

By the REV. HENRY CHRISTMAS, M.A., F.R.S., F.S.A.,

Late of St. John's College, Cambridge.